

90-438

No. \_\_\_\_\_

Supreme Court, U.S.

FILED

AUG 12 1990

JOSEPH F. SPANOL, JR.  
CLERK

IN THE  
" SUPREME COURT OF THE UNITED STATES

Term, 1990

CHARLES STEWART,

Petitioner,

vs.

DOROTHY MORRIS and  
FLOYD ENFINGER, JR.

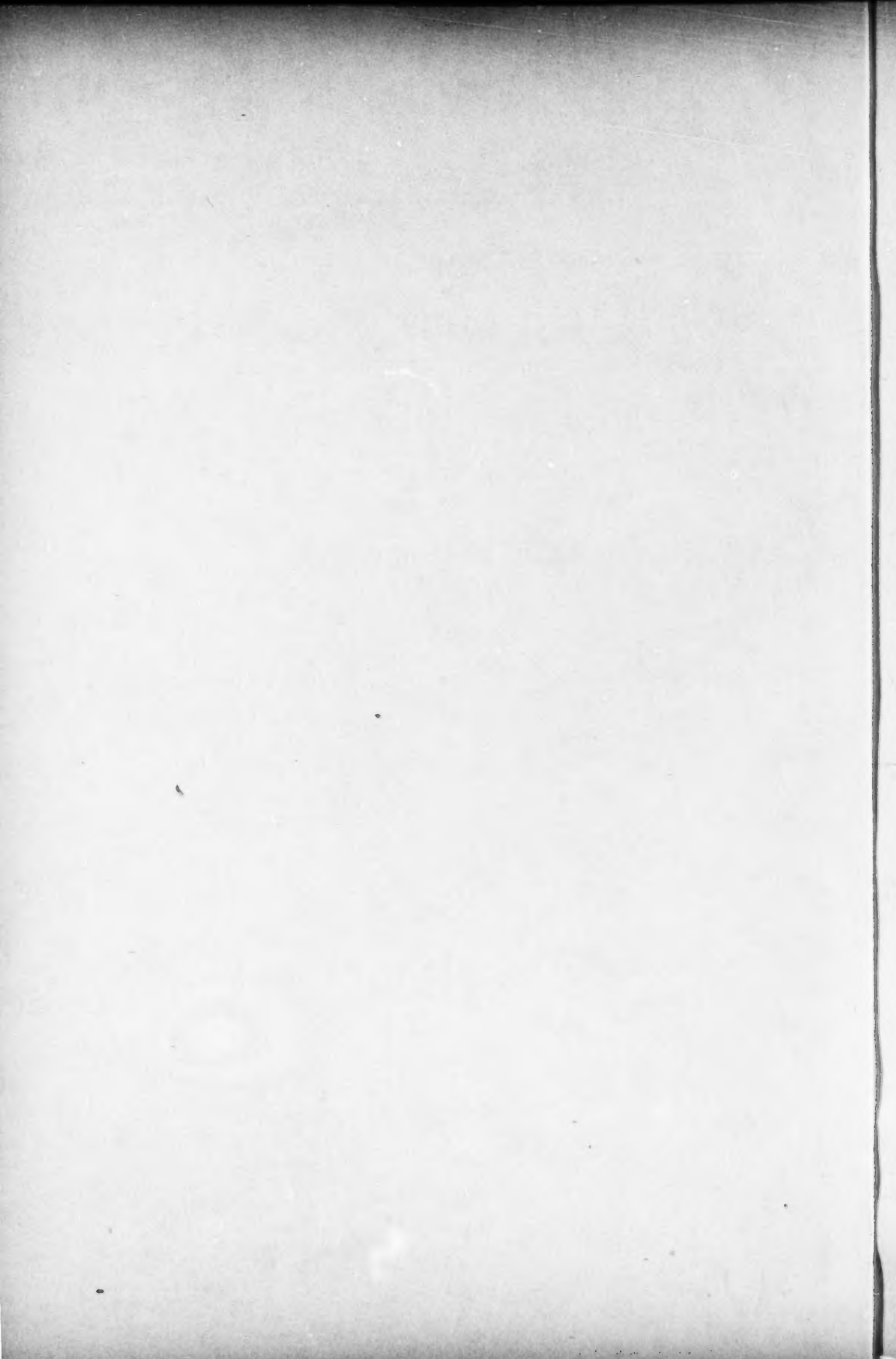
Respondents.

-----  
PETITION FOR WRIT OF CERTIORARIS  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT  
-----

PETITION FOR WRIT OF CERTIORARI

Henry E. Lagman  
Attorney for Petitioner  
Suite 102  
200 Cahaba Park South  
Birmingham, Alabama 35242  
Telephone: (205) 995-0220

BEST AVAILABLE COPY



### QUESTIONS PRESENTED

A. Do attorney's fees, incurred by a person defending himself in an action where the proceedings had been corrupted, constitute damages under RICO?

B. Are incidental damages compensable under RICO?

C. Can a plaintiff recover damages under RICO for incidental damages which he suffered as a direct proximate cause of the racketeering activity?

1904-1905

At the first meeting of the  
Board of Directors, held on  
January 1st, 1905, the following  
resolutions were adopted:  
1. That the Board of Directors  
be authorized to raise the  
amount of the capital stock  
to \$100,000.  
2. That the Board of Directors  
be authorized to issue bonds  
to the amount of \$50,000.  
3. That the Board of Directors  
be authorized to lease the  
premises now occupied by the  
company for a term of years.  
4. That the Board of Directors  
be authorized to employ such  
personnel as may be necessary  
for the proper management of  
the company's business.



## PARTIES INVOLVED

1. Charles Stewart is the Petitioner in this action.

2. Dorothy Morris is a Respondent in this action.

3. Floyd Enfinger, Jr., is a Respondent in this action and is a former Circuit Court judge for Baldwin County, Alabama.



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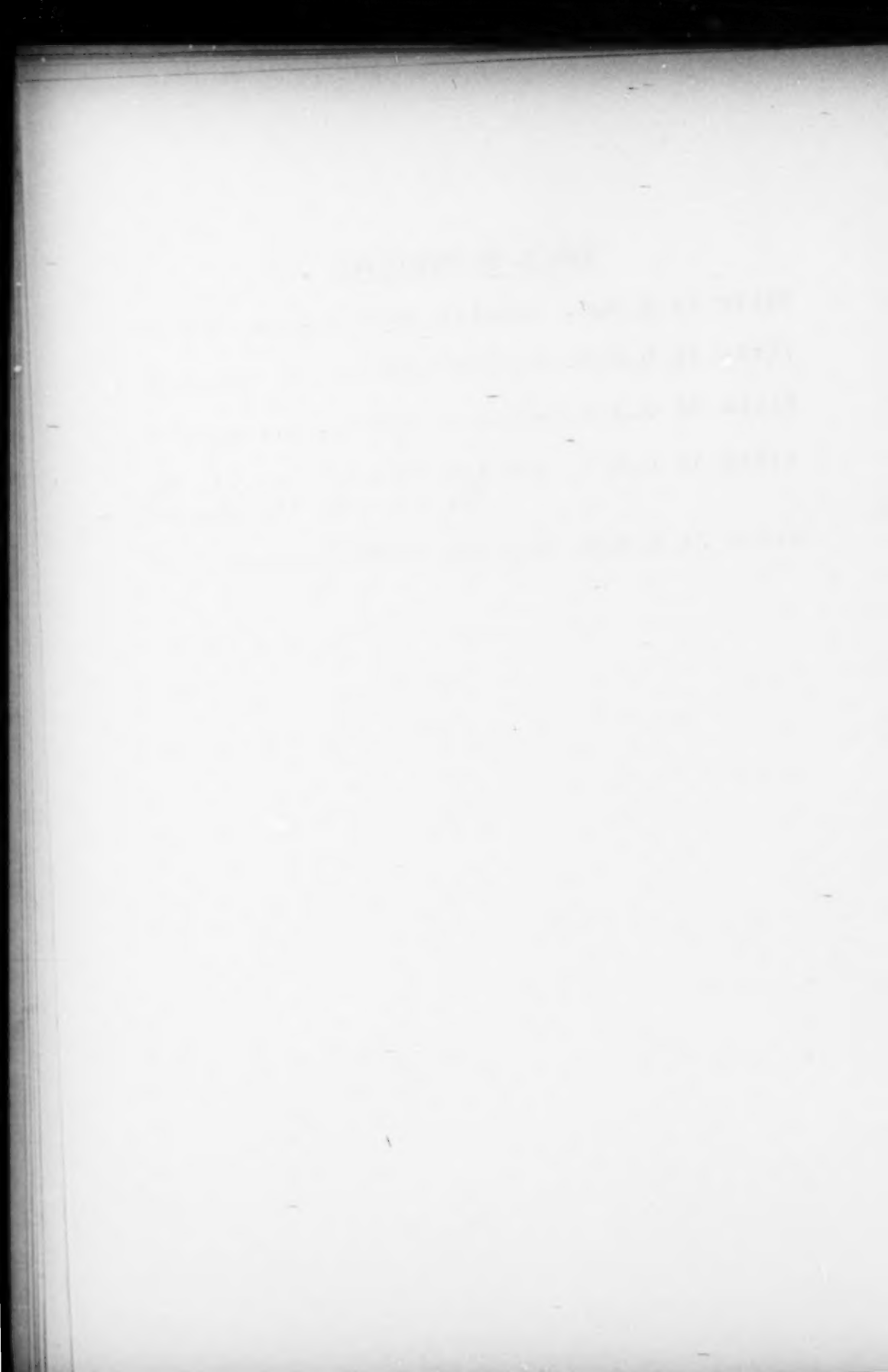
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PETITION FOR WRIT OF CERTIORARIS  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT

-----

Petitioner Charles Stewart respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered in this matter on May 29, 1990.

SECTION THE WAY OF CIVILIZATION

IN THE UNITED STATES COURT OF

APPEALS FOR THE SEVENTH CIRCUIT

IN RE THE ESTATE OF JAMES H. HARRIS

DECEASED

APPEAL FROM THE DISTRICT COURT OF

THE UNITED STATES FOR THE SEVENTH CIRCUIT

FILED FOR RECORD

THIS CASE BEING ONE OF THE

APPEALS FROM THE DISTRICT COURT

OF THE UNITED STATES FOR THE SEVENTH CIRCUIT

FILED FOR RECORD

THIS CASE BEING ONE OF THE

APPEALS FROM THE DISTRICT COURT

OF THE UNITED STATES FOR THE SEVENTH CIRCUIT

FILED FOR RECORD

THIS CASE BEING ONE OF THE

APPEALS FROM THE DISTRICT COURT

OF THE UNITED STATES FOR THE SEVENTH CIRCUIT

FILED FOR RECORD

THIS CASE BEING ONE OF THE

I.

OPINIONS BELOW

The Judgments of the United States District Court for the Southern District of Alabama, Southern Division, entered in 86-0607-AH are unreported. The Judgment of the United States District Court for the Southern District of Alabama, Southern Division, entered for Defendant Floyd Enfinger is reflected in Appendix A, and the judgment for Defendant Morris is reflected in Appendix B. The order of the United States Court for the Southern District of Alabama, Southern Division, entered in 86-0607-AH certifying the two judgments, Appendix A and Appendix B as final orders is reflected in Appendix C. The order of the Eleventh Circuit Court of Appeals affirming the District Court's decision is reflected in Appendix D.



## II.

### JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals was entered on May 29, 1990, and this petition was filed within 90 days of that date. The statutory provision which confers jurisdiction on this Court to review the judgment of the Court of Appeals by Writ of Certiorari is 28 U.S.C. 1254(1).



### III.

#### STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C. Sections 1961, 1962, 1964 are attached as Appendix E and Title 18 U.S.C. Section 1964(c) reads as follows:

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter [18 USCS 1962] may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C. Sections 1961, 1962, 1963  
are amended as follows:  
U.S.C. Section 1961(a) reads as follows:

(a) Any person who knowingly  
conspires or attempts to  
conspire to violate any  
law of the United States  
which may be enforced by  
the Federal Bureau of  
Investigation shall be  
guilty of a crime.  
The term "any law of the  
United States" shall include  
any law of the United States  
which may be enforced by  
the Federal Bureau of  
Investigation.



#### IV.

#### STATEMENT OF FACTS

In 1985, in the Circuit Court of Baldwin County, Alabama, a divorce action was instituted by Respondent Morris against Petitioner Stewart. Subsequently, another action was filed by Morris against Stewart with Respondent Morris seeking one hundred thousand dollars in damages for an alleged assault perpetrated by Stewart. Thereafter, there were three separate Rule Nisi actions filed by Morris against Stewart. The divorce action between Morris and Stewart came before Respondent Enfinger as a Circuit Court judge. Enfinger heard the pretrial motions and conducted the trial in the aforementioned action and rendered a decision in favor of Morris. After the conclusion of the divorce action, Enfinger had at least some

STATEMENT OF FACTS

In 1952, in the second month of  
 January, 1952, a document was  
 received by the Department of  
 the Interior, Bureau of Land  
 Management, from the Bureau of  
 Reclamation, which was dated  
 January 10, 1952, and was  
 captioned "Bureau of Reclamation  
 to Bureau of Land Management,  
 January 10, 1952, regarding  
 the proposed withdrawal of  
 certain lands from the public  
 domain for the purpose of  
 establishing a national monument  
 in the State of Nevada."  
 The document was signed by  
 the Director of the Bureau of  
 Reclamation, and was addressed  
 to the Director of the Bureau of  
 Land Management. The document  
 stated that the Bureau of  
 Reclamation had received  
 information from the Nevada  
 State Engineer, which indicated  
 that certain lands in the  
 State of Nevada were being  
 used for the purpose of  
 establishing a national monument.  
 The document requested that  
 the Bureau of Land Management  
 be kept advised of any  
 developments in the matter.

involvement with the pending civil action and the Rule Nisi actions. The parties are in a disagreement as to exactly what involvement Enfinger had with these still pending actions before the Circuit Court of Baldwin County.

In the Spring of 1986, Morris made a complaint to the Judiciary Inquiry Commission for the State of Alabama, (Hereinafter referred to as the JIC) asserting that Enfinger had used his position as a Circuit Court judge to coerce her to have sex with him. During sworn testimony given before the JIC, Morris asserted that her and Enfinger had entered into an agreement where she would provide sex in return for favorable treatment before the Circuit Court. Morris' testimony encompassed two separate occasions on which Judge Enfinger and she



met at her home, engaged in sexual activity, and discussed the pending civil actions. There was also testimony by Morris to the effect that there were a number of telephone conversations between Judge Enfinger and her and during which they discussed the amount of money that she may receive because of the pending civil actions, how to proceed with these actions, and what attorney or attorneys she should use and discuss her legal matters with. Morris now refutes those statements and now states that the only reason that she engaged with in sex with Enfinger was to have her actions set for trial. Respondent Enfinger denies that he ever engaged in sexual intercourse with Morris or ever entered into any agreement whatsoever. Enfinger does admit that he did on one occasion go to Morris' home, while the aforementioned civil action was



pending.

Stewart filed a complaint with the United States District Court for the Southern District of Alabama, Southern Division asserting a RICO claim against then Judge Enfinger and Morris. Stewart alleged that Enfinger and Morris had engaged in racketeering activity as defined within Title 18 Section 1964, specifically, that Morris bribed Enfinger with sexual favors to get Enfinger to predecide actions that were pending before the Circuit Court of Baldwin County, and/or to use his influence to cause actions which were pending before the Circuit Court of Baldwin County to be decided in Morris' favor. Stewart alleged that defendants had affected interstate commerce by asserting that the office of the Circuit Court judgeship of Baldwin





County affected interstate commerce. Stewart asserted that the conduct had been effected through an enterprise, the office of the Circuit Court judgeship of Baldwin County. Finally, Stewart asserted that he was damaged in the amount of \$6,500.00 because of the bribery and conspiracy. The \$6,500.00 constituting attorney's fees that Stewart incurred in defending, uncovering, and exposing the corruption of Judge Enfinger's office. Eventually, Judge Enfinger and all other judges in Baldwin County recused themselves. A specially appointed judge heard and disposed of the civil action and the Rule Nisi actions in Stewart's favor.



V.

REASONS FOR GRANTING WRIT

The District Court granted Morris and Enfinger's motions for summary judgment, finding that the Plaintiff lacked standing under RICO. The District Court specifically stated that the type of damages which the Plaintiff had asserted were incidental and therefore were not compensable under RICO. The District Court did not dispute that the damages as asserted by Stewart flowed from the predicate acts of racketeering.

The District Court's decision was based upon the presumption that Petitioner's damages in the form of money paid as attorney's fees were incidental and not proprietary. The District Court further based its judgment upon the



assumption that incidental damages are not comprehensible under RICO. It is the Petitioner's position that the District Court erred and decided a federal question in a way that is in conflict with an applicable decision of this Court, specifically, Sedima, S.P.R.I. v. Imrex Co., Inc., 473 U.S. 479, 105 S.Ct. 3285, 3275, 87 L.Ed.2d 346 (1985). The District Court's decision in this action is very similar to the district court's decision in Sedima, in both cases the district courts elected to pursue a line of reasoning which limited compensable damages under RICO. The district court in Sedima ruled that the only damages recoverable under RICO were racketeering type damages. This Court overruled that decision noting that the RICO statutes are to be liberally construed to effect their redeemial purposes. This Court noted that

assumption that intended damages are not  
comprehensible under 510. It is the  
petitioner's position that the District  
Court erred and decided a Federal question  
in a way that is in conflict with an  
applicable decision of this Court,  
specifically, Edwards, 298 U.S. 149,  
304 U.S. 275, 102 S.Ct. 518,  
307, 57 L.Ed.2d 1152. The majority  
Court's opinion in this action is very  
similar to the District Court's opinion  
in Edwards, it says that the District  
Court's opinion is correct in that it  
concludes that the Federal question  
exists under 510. The majority Court is  
further cited that the only reason  
for this is that the majority  
Court's opinion is correct in that it  
concludes that the Federal question  
exists under 510. The majority Court is  
further cited that the only reason  
for this is that the majority  
Court's opinion is correct in that it  
concludes that the Federal question  
exists under 510. This Court should find  
that the majority Court's opinion is  
correct in that it concludes that the  
Federal question exists under 510.

the compensable injury are damages caused by the predicated acts, and further stated that, "[A]ny recoverable damages occurring by reason of a violation of 1962(c) will flow from the commission of the predicate acts." At 359. Similarly, the District Court's decision in this action, both in finding that damages in the form of money paid to an attorney to be incidental damages and not proprietary and ruling that only proprietary damages are compensatory under RICO is in conflict with this Court's decision in Sedima. The District Court's presumption that money is not property within the meaning of Title 18 U.S.C. 1964(c), is unsupported by any decision of this Court or any appellate decision and contrary to this Court's decision in Sedima.

The number of incidents where a





monetarily loss could be asserted to be incidental to the racketeering activity is too numerous to mention in detail; but a few examples would demonstrate that the District Court's decision is flawed: In a RICO claim where arson is the alleged racketeering activity, the insurance proceeds may ultimately flow to the bank or the mortgage holder; the insurance company would still have suffered damages and the money would not have flowed directly to the persons participating in the activity prohibited by RICO. Nevertheless, a RICO claim would lie if there was sufficient other factual information to support it and the only damage sustained by the racketeering was the monetarily loss not the arson. Where a gambling debt or an unlawful loan is being collected by the use of strong arm tactics, threats, coercion, and assaults;



the racketeering activity would be the threats and coercion, as well as, the assaults and the damages would still be monetary. This action concerns a claim no different in kind than the aforementioned. The plaintiff was damaged monetary because of the racketeering activities. Money has always been considered property and the District Court's departure from this historically held position is not in keeping with decisions of this Court or other appellate courts of this Country.

The decision of the District Court is a departure from Sedima and limits the damages which a plaintiff may assert in a RICO action. The issue of incidental versus proprietary damages has not come before this Court or any applicable appellate court where a published decision has addressed this issue. Therefore, this



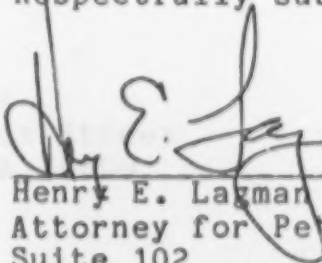
is an issue which is ripe and proper for this Court to hear and determine.

VI

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



Henry E. Lagman  
Attorney for Petitioner  
Suite 102  
200 Cahaba Park South  
Birmingham, Alabama 35242  
Telephone: (205) 995-0220

17 August, 1990

to be issued which is also and proper for  
this house to have and receive.

CONCURRENCE

and the committee have been  
informed for a bill of collection of  
the same.

Approved by the committee  
on the 13th day of  
January 1872  
J. H. [Signature]  
Chairman

at length

## PROOF OF SERVICE

Henry E. Lagman after being duly sworn, disposes and says that pursuant to Rule 28.4(a) of this Court he served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT on counsel for the Respondents by enclosing a copy thereof in an envelope, first class postage prepaid, addressed to:

J. Donald Banks  
28 North Florida Street  
Mobile, Alabama 36609

and

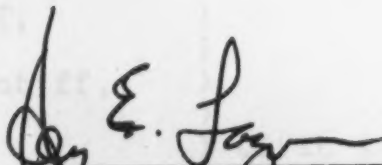
Arthur J. Madden, III  
465 Dauphin Street  
Mobile, Alabama 36602,

and depositing same in the United States mails at Birmingham, Alabama, on the 17th of August, 1990; and on 6<sup>th</sup> of September, 1990, I served



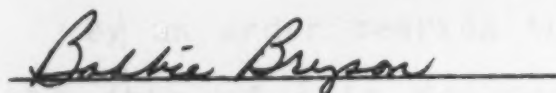


Petitioner's corrected Petition on the  
aforementioned parties.

  
Henry E. Lagan, Affiant

Subscribed and Sworn to Before Me this

6th day of September 1990.

  
Burtie Bryson

Notary Public

my commission expires 8-3-94

Petitioner's requested position on the

aforementioned parties.

  
J. E. Taylor, Attorney

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

  
Notary Public

Very truly yours, J. E. Taylor

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

CHARLES STEWART,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO.
	)	86-0607-AH-C
	)	
DOROTHY MORRIS, FLOYD	)	
ENFINGER, JR.,	)	
	)	
Defendants.	)	

JUDGMENT

By an order bearing the same date as the date of this document, the Court granted defendant Enfinger's motion for summary judgment. Accordingly, it is ORDERED that the plaintiff Charles Stewart take nothing from the defendant Floyd Enfinger with respect to plaintiff's claim in the above styled and numbered action.

DONE this 26th day of May, 1989.

Alex T. Howard

-----  
Chief United States  
District Judge



UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

CHARLES STEWART, )  
 )  
Plaintiff, )  
 )  
vs. ) CIVIL ACTION NO.  
 ) 86-0607-AH-C  
 )  
DOROTHY MORRIS, FLOYD )  
ENFINGER, JR., )  
 )  
Defendants. )

ORDER

This cause is before the Court on a motion for summary judgment filed by the defendant Floyd Enfinger, Jr., (Doc. #83), and the plaintiff's opposition thereto (Doc. #84). Defendant Enfinger adopted the brief filed by defendant Morris in support of her motion for summary judgment, which the Court granted by order dated March 24, 1989, ruling that plaintiff Stewart did not have standing to bring this RICO cause of action.

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
Southern Division

CHARLES STEWART, et al. vs. JAMES M. STEWART, et al.  
Plaintiffs vs. Defendants  
JAMES M. STEWART, et al. vs. CHARLES STEWART, et al.  
Defendants vs. Plaintiffs  
The undersigned, being a duly qualified and sworn  
juror, do hereby certify that the foregoing is a  
true and correct copy of the original of the  
same as the same was filed in the office of the  
Clerk of the Court at the City of Mobile, Alabama,  
this 1st day of January, 1911.

Plaintiff's RICO cause of action is premised on his allegations that in order to secure favorable treatment in certain civil actions then pending before former Judge Enfinger, defendant Morris engaged in sexual relations on two occasions with defendant Enfinger. These two sexual encounters are alleged to be the necessary predicate acts required by RICO. There are many disputed factual issues in this action. Most notable is that each defendant denies the existence of the two predicate acts. Defendant Enfinger denies that he ever engaged in sexual relations with defendant Morris, and denies that he ever entered into any agreement or arrangement with her. (Affidavit of Enfinger, 86-0608, Doc. #82) Defendant Morris states that she engaged in sexual relations with Enfinger, but claims that she did so only in order to have her case





set on the Baldwin County trial docket.  
(Affidavit of Morris, 86-0607, Doc. #63).

Federal Rule of Civil Procedure 56 provides that summary judgment shall be granted:

if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

See also Matsushita Elec. Induc. Co. v. Zenith Radio, 106 S.Ct. 1348, 1354 (1986); Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2554 (1986) ("the burden on the moving party may be discharged by "showing" -- that is, by pointing out to the District Court -- that there is an absence of evidence to support the nonmoving party's case."); Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505, 2510 (1986).



2007, Nov. 16, 44-3602-Sub. 2731

"[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 106 S.Ct. at 2510. The basic issue before the Court when it weighs a motion for summary judgment is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson 106 S.Ct. at 2512.

Defendant Enfinger claims that he is entitled to summary judgment on the RICO cause of action as a matter of law, even if all the disputed issues of fact are resolved in favor of the plaintiff. Plaintiff denies that this is so. (86-



0607, Doc. #63, 86-0607 Doc. #73).

Defendant argues that there are three independent reasons why plaintiff cannot recover, and that each is sufficient to grant defendant's motion for summary judgment. First, defendant claims that plaintiff lacks standing to bring a RICO claim because the injury plaintiff claims to have sustained does not give rise to a RICO cause of action. Second, defendant argues that plaintiff's allegations regarding the RICO predicate acts are insufficient as a matter of law. Third, defendant argues that plaintiff has failed to allege the requisite continuity of the alleged racketeering activity. Because the Court finds that plaintiff lacks standing to bring this action, the Court need not consider defendant's remaining two arguments.

Defendant argues that there are four independent reasons why Plaintiff cannot recover, and that each is sufficient to grant defendant's motion for summary judgment. First, defendant claims that Plaintiff lacks standing to bring a class claim because the injury allegedly suffered by some members does not give rise to a class of injury. Second, defendant argues that Plaintiff's allegations are insufficient to establish that the defendant acted with the intent to discriminate on the basis of race. Third, defendant argues that the evidence is insufficient to establish that the defendant acted with the intent to discriminate on the basis of race. Fourth, defendant argues that the evidence is insufficient to establish that the defendant acted with the intent to discriminate on the basis of race.

Standing.

Private civil RICO actions are provided for under 18 U.S.C. 1964(c) which states that:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

Id. In order to state a RICO cause of action, plaintiff must plead and prove (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, S.P.R.I. v. Imrex Co., Inc., 473 U.S. 479, 105 S.Ct. 3285, 3275 87 L.Ed.2d 346 (1985). Furthermore, a RICO plaintiff does not have standing to bring the action unless he has been injured in his business or property. Id.

provided for under 18 U.S.C. 1002(a) which  
states that:

Any person who is found to be in possession of  
any document or information of a confidential  
nature shall be liable to a fine of not more  
than \$10,000 and imprisonment for not more  
than five years, or both, if the document or  
information is of a confidential nature and  
the person is found to be in possession of  
the document or information with knowledge  
that it is confidential.

It is noted that the above is a summary of  
the provisions of the law which relate to the  
protection of confidential information. The law  
is designed to protect the confidentiality of  
information which is obtained from a confidential  
source. The law is designed to protect the  
confidentiality of information which is obtained  
from a confidential source. The law is designed  
to protect the confidentiality of information  
which is obtained from a confidential source.  
The law is designed to protect the confidentiality  
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from a confidential source. The law is designed  
to protect the confidentiality of information  
which is obtained from a confidential source.



Plaintiff Stewart claims that he was injured in his business or property in that he incurred expenses totalling \$6,500.00 in defending the legal proceedings instituted by defendant Morris, and that he suffered mental distress. It is settled law that "some aspects of damages normally recoverable for personal injuries, such as mental anguish, fall outside the rubric of "business or property." Grogan v. Platt, 835 F.2d 844, 846 (11th Cir. 1988). Whether attorney's fees incurred by the plaintiff defending the Baldwin County actions constitute injury to property within the meaning of the statute is a closer question. The Court has been unable to locate any binding case directly on point. However, defendant cited a District Court case from the Southern District of Florida which is directly on

Plaintiff Stewart claims that he was  
injured in his business or property in  
that he incurred expenses totaling  
\$5,200.00 in defending the legal  
proceedings instituted by defendant  
Hortley, and that he suffered mental  
distress. It is asserted that these  
amounts of damages are fully recoverable  
for personal injuries, such as mental  
anguish. This court is not aware of  
"business or property." Green v. Hall,  
115 S.W.2d 511, 512 (Tex. Civ. App. 1942).  
Whether attorney's fees incurred by the  
plaintiff in defending his business or  
personal property are recoverable is a  
question which is not clearly  
settled. Green v. Hall, 115 S.W.2d 511,  
512 (Tex. Civ. App. 1942). The court has  
held that attorney's fees incurred by  
the plaintiff in defending his business or  
personal property are recoverable when a  
disturbance of the plaintiff's business or  
personal property is shown.

point, and with which this Court agrees: Local 355 v. Pier 66 Corp., 599 F.Supp. 761 (S.D.Fla. 1984). In Local 355 a labor union brought suit against an employer for damages it sustained when the employer induced its employees to file a decertification petition with the National Labor Relations Board. The Florida Court held that attorneys' fees and costs incurred by the union in defending against the decertification effort were "incidental damages which [did] not arise to the type of proprietary damage for which RICO gives compensation." Id. at 765. Plaintiff argues that Local 355 is "easily distinguishable" because the damages there were incidental and were not caused by the racketeering activity. The Court disagrees, and adopts the reasoning followed by the Florida court. Plaintiff does not have standing to bring this RICO



action and accordingly, defendant Enfinger's motion for summary judgment is due to be, and hereby is, GRANTED. Judgment will be entered accordingly by separate document.

DONE this 26th day of May, 1989.

Alex T. Howard .

-----  
Chief United States  
District Judge

Editor and respectfully, defendant  
Following is a notice for summary judgment in  
case No. 10, and case No. 11, captioned  
Judgment will be entered accordingly by  
separate documents.

Done this 10th day of May, 1904.

John F. Smith  
Clerk of Court  
Court House  
St. Louis, Mo.

John F. Smith  
Clerk of Court  
Court House  
St. Louis, Mo.

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

CHARLES STEWART,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO.
	)	86-0607-AH-C-
	)	
DOROTHY MORRIS, FLOYD	)	
ENFINGER, JR.,	)	
	)	
Defendants.	)	

JUDGMENT

By an order bearing the same date as the date of this document, the Court granted defendant Morris' motion for summary judgment. Accordingly, it is ORDERED that the plaintiff Charles Stewart take nothing from the defendant Dorothy Morris with respect to plaintiff's claim in the above styled and numbered action.

DONE this 24th day of March, 1989.

Alex T. Howard

-----  
Chief United States  
District Judge

THE UNITED STATES  
DEPARTMENT OF AGRICULTURE  
WASHINGTON, D. C.



UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

CHARLES STEWART,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO.
	)	86-0607-AH-C
	)	86-0608-AH-C
DOROTHY MORRIS, FLOYD	)	
ENFINGER, JR.,	)	
	)	
Defendants.	)	

ORDER

The following motions are pending in  
these consolidated cases:

(1) plaintiff's motion for summary judgment filed in 86-0607 (the RICO case) (Doc. #58);

(2) plaintiff's motion to preserve its objections to the defendant's witness and exhibit list, 86-0607 (Doc. #62);

(3) defendant Morris' motion for summary judgment, and response to plaintiff's motion for summary judgment, filed in 86-0607 (the RICO case) (Doc. #63);

(4) plaintiff's response to defendant Morris' motion for summary judgment in 86-0607 (the RICO case) (Doc. #73);



Subject-matter jurisdiction.

(5) defendant Morris' motion to dismiss for lack of subject-matter jurisdiction, filed in the two cases as consolidated (Doc. #74);

(6) defendant Enfinger's motion to dismiss for lack of subject-matter jurisdiction, filed in the two cases as consolidated (Doc. #75);

(7) defendant Enfinger's motion to amend his answer in 86-0607 (Doc. #76);

(8) defendant Enfinger's motion to amend his answer in 86-0608 (Doc. #77);

(9) defendant Morris' additional response to the plaintiff's motion for summary judgment, 86-0607 (Doc. #78);

(10) plaintiff's additional response to the defendants' 12(b) (1) motions, and plaintiff's motion for sanctions under Rule 11, 86-0607 (Doc. #79);

(11) defendant Morris' request for oral argument, 86-0607 (Doc. #80);

(12) plaintiff's motion to preserve its objection to the defendants' witness list and exhibits, filed in 86-0608 (Doc. #83);

(13) defendant Enfinger's opposition to plaintiff's motion for summary judgment, filed in 86-0608, (Doc. #82, 84).

101. [illegible] [illegible] [illegible]  
 102. [illegible] [illegible] [illegible]  
 103. [illegible] [illegible] [illegible]  
 104. [illegible] [illegible] [illegible]  
 105. [illegible] [illegible] [illegible]  
 106. [illegible] [illegible] [illegible]  
 107. [illegible] [illegible] [illegible]  
 108. [illegible] [illegible] [illegible]  
 109. [illegible] [illegible] [illegible]  
 110. [illegible] [illegible] [illegible]  
 111. [illegible] [illegible] [illegible]  
 112. [illegible] [illegible] [illegible]  
 113. [illegible] [illegible] [illegible]  
 114. [illegible] [illegible] [illegible]  
 115. [illegible] [illegible] [illegible]  
 116. [illegible] [illegible] [illegible]  
 117. [illegible] [illegible] [illegible]  
 118. [illegible] [illegible] [illegible]  
 119. [illegible] [illegible] [illegible]  
 120. [illegible] [illegible] [illegible]

### Subject-matter jurisdiction.

Each defendant moved for dismissal of these consolidated actions for lack of subject-matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12 (b) (1) (Doc. ##74,75). Plaintiff responded to the merits of the motion and in addition moved for the imposition of sanctions under Rule 11 (Doc. #79). The Court will address the issue of subject-matter jurisdiction first.

Defendants contend that plaintiff's claims are barred by the Feldman doctrine, which prohibits federal courts from asserting subject-matter jurisdiction over claims which are inextricably intertwined with state court judgments. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 n.16, 103 S.Ct. 1303, 1315 n. 16, 75 L.Ed.2d 206 (1982). Defendants argue that since the basis of plaintiff's



claims is that he received unfavorable treatment in the divorce action, this court lacks subject-matter jurisdiction because the RICO and 1983 issues are "inextricably intertwined" with valid state court judgments. Defendants contend that plaintiff was aware of all the alleged improprieties while the state court actions were still pending, and that plaintiff should have raised his federal claims in state court, rather than filing this action.

The Court finds the cases cited by the defendants to be distinguishable in important respects from Stewart's situation. Staley v. Ledbetter, 837 F.2d 1017 (11th Cir. 1986), was an action brought by an adoptive mother to challenge the State of Georgia's child custody determinations. Plaintiff there filed suit under 1983, but requested

claim is that he received satisfactory  
treatment in the divorce suit, and this  
court lacks subject-matter jurisdiction  
because the RICO and 1953 laws are  
"indefinitely intervenient" with valid  
state court judgments. Defendants contend  
that plaintiff was aware of all the  
alleged representations while the state  
court action was still pending, and that  
plaintiff should have raised his federal  
claims in state court rather than filing  
this action.

The court finds the claim timely and  
admissible as an independent basis for  
relief, and grants summary judgment in  
plaintiff's favor. State v. Federal, 1953  
107 F.2d 411, 420, 128 U.S. 411, 420  
affirmed by an equally divided court. The  
case of State v. Federal is cited as  
authoritative. Plaintiff there filed  
his complaint in 1954, but represented



reinstatement of physical custody and psychiatric care at state expense. Although both Hale v. Harney, 786 F.2d 688 (5th Cir. 1986) and Brinkman v. Johnston, 793 F.2d 111 (5th Cir. 1986) dealt with situations in which ex-husbands brought civil rights actions against their ex-wives and the presiding judges, in each of these cases, a large portion of the relief sought was apparently modification of the divorce decrees.<sup>1</sup> Plaintiff here does not seek to set aside the state court judgments, but instead claims monetary damages resulting from defendant's Enfinger's misuse of his position, and defendant Morris' assistance therein.

After careful review of the file and

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1        Hale, 786 F.2d at 690. The Brinkman opinion does not expressly state this to be the case, but does stress the similarity between the factual situations in Brinkman and Hale.

relationship of physical security and  
psychiatric care - at state expense.  
Although both Hale v. Horney, 765 F.2d 588  
(5th Cir. 1985) and Brennan v. Johnston,  
797 F.2d 117 (5th Cir. 1986) dealt with  
situations in which ex-husbands brought  
civil rights actions against their ex-  
wives and the District Judge, in each of  
these cases, a large portion of the relief  
sought was apparently motivation of the  
litigant. The District Judge also  
seems to not note the state's duty  
independent, but instead citing authority  
damages resulting from defendant's  
litigant's abuse of his position, and  
defendant's "unreasonable" behavior.  
Again, however, review of the file and

- Hale, 765 F.2d at 590. The  
litigant's action does not  
seem to state that he was  
damaged, but does state that  
litigant's action was "unreasonable."  
litigant in Brennan and Hale.

the case law, the Court concludes that the Feldman doctrine does not prevent it from asserting subject-matter jurisdiction over the instant action. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 n.16, 103 S.Ct. 1303, 1315 n. 16, 75 L.Ed.2d 206 (1982); Staley v. Ledbetter, 837 F.2d 1017 (11th Cir. 1986); Hale v. Harney, 786 F.2d 688 (5th Cir. 1986); Brinkman v. Johnston, 793 F.2d 111 (5th Cir. 1986).

Federal Rule of Civil Procedure 11.

Turning now to the plaintiff's motion for Rule 11 sanctions, plaintiff contends that defendants' motion to dismiss for lack of subject-matter jurisdiction was warranted neither under the facts, or any good faith interpretation of the facts, nor under the law, or any good faith

the case law, the Court concluded that the  
[redacted] does not present a true  
[redacted] subject-matter jurisdiction over  
the [redacted] action. [redacted] of [redacted]  
[redacted] of [redacted] v. [redacted], 400 U.S. 801,  
405 U.S. 103, 103 S.Ct. 1303, 1315-16, 18-19  
[redacted] 408 [redacted] v. [redacted],  
401 U.S. 1017 (1970). [redacted] [redacted] v.  
[redacted], 408 U.S. 424, 425 (1972).  
[redacted] v. [redacted], 401 U.S. 1130  
[redacted] (1971).

[redacted] Rule of Civil Procedure 11.  
Turning now to the [redacted] question  
the [redacted] [redacted] [redacted] [redacted]  
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted]  
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted]  
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted]  
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted]  
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted]

argument for extension of the law. Rule 11 of the Federal Rules of Civil Procedure provides in pertinent part that:

The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ... If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion, or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The primary goal of Rule 11 is to



address bad faith filings. The test to be applied is an objective one of reasonableness. Eavenson, Auchmutz, and Greenwald v. Holtzman, 775 F.2d 535, 540 (3rd Cir. 1985) (hereinafter referred to as Eavenson). In Eavenson, the court followed the Advisory Committee's comment, and held:

In exercising its discretion, the district court, "is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted."

Notes of Advisory Committee on Rules, 1983 Amendment, Fed. R. Civ. P. 11.

In a motion pursuant to Rule 11, F.R.C.P., success or failure on the merits is not determinative. Marco Holding Co. v. Lear Siegler, Inc., 606 F.Supp. 204, 215 (1985) ("It does not follow that Rule 11 Sanctions should be imposed in every instance where a motion is denied . . .).





In the instant action, the defendants' claim that that the Court lacked subject-matter jurisdiction was a well reasoned interpretation of a murky area of federal law, which included a cogent argument for an extension of existing law. That the Court ultimately rejected defendants' argument does not mean that the argument was not grounded in a good faith interpretation of the facts, or was not a good faith argument for an extension of the law. There is absolutely no indication or evidence of unprofessional or unethical conduct on the part of the attorneys for the defendants.

For the reasons set forth above, plaintiff's motion pursuant to Rule Eleven (11) is DENIED.

Plaintiff's Motion for Summary Judgment.

Plaintiff has moved for summary

In the instant action, the defendant  
claims that the Court took subject-  
matter jurisdiction was a well reasoned  
interpretation of a murky area of federal  
law, which included a cogent argument for  
an extension of existing law. That the  
Court ultimately rejected defendant's  
argument does not mean that the argument  
was not grounded in a good faith  
interpretation of the law, or was not a  
good faith argument for an extension of  
the law. There is absolutely no  
indication or evidence of unprofessional  
or unethical conduct on the part of the  
attorneys for the defendant.

For the reasons set forth above,  
Plaintiff's motion pursuant to Rule 11(b)  
(ii) is denied.

Plaintiff's Motion for Summary Judgment  
Plaintiff has moved for summary

judgment on his RICO claim against the defendants, arguing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. (86-0607 Doc. #58, 86-0607 Doc. #63, 86-0607 Doc. #78, 86-0608, Doc. ##82, 84). The Court disagrees. Plaintiff's RICO cause of action is premised on his allegations that in order to secure favorable treatment in the civil actions pending before former Judge Enfinger, defendant Morris engaged in sexual relations on two occasions with defendant Enfinger. These two sexual encounters are alleged to be the necessary predicate acts required by RICO. Plaintiff contends that it has brought "substantial and irrefutable" evidence in support of his case. This is clearly not true, in light of the fact that both defendants vigorously refute plaintiff's version of



the facts. There are many disputed factual issues in this action. Most notable is that each defendant denies the existence of the two predicate acts. Defendant Enfinger denies that he ever engaged in sexual relations with defendant Morris, and denies that he ever entered into any agreement or arrangement with her. (Affidavit of Enfinger, 86-0608, Doc. #82) Defendant Morris states that she engaged in sexual relations with Enfinger, but claims that she did so only in order to have her case set on the Baldwin County trial docket. (Affidavit of Morris, 86-0607, Doc. #63).

Federal Rule of Civil Procedure 56 provides that summary judgment shall be granted:

if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to

the facts, there are many disputed  
factual issues in this action. Most  
notable is that each defendant denies the  
existence of the two predicate acts.  
Defendant Enfinger denies that he ever  
engaged in sexual relations with defendant  
Morris, and denies that he ever entered  
into any agreement or arrangement with  
her. Affidavit of Enfinger, 85-0507,  
Doc. 485. Defendant Morris also denies  
that she engaged in sexual relations with  
Enfinger, but wishes that she did so only  
in order to have her son out of the  
Baldwin County Child Center. Affidavit  
of Morris, 85-0507, Doc. 483.  
Federal Rule 7 Civil Procedure 22  
provides that summary judgment shall be  
granted:

It is provided, disposition, answer,  
to interrogatories, and admission of  
facts together with the affidavit, it  
may, then, that there is no genuine  
issue as to any material fact and that  
the moving party is entitled to

judgment as a matter of law.

See also Matsushita Elec. Induc. Co. v. Zenith Radio, 106 S.Ct. 1348, 1354 (1986); Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2554 (1986) ("the burden on the moving party may be discharged by "showing" -- that is, by pointing out to the District Court -- that there is an absence of evidence to support the nonmoving party's case."); Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505, 2510 (1986).

"[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 106 S.Ct. at 2510. The basic issue before the Court when it weighs a motion for summary judgment is whether the evidence presents a sufficient disagreement to require submission to a



Judgment as a matter of law.

See also: Massachusetts Elec. Light Co. v. Eastern Radio, 100 S.Ct. 1348, 1354 (1980); Colony Corp. v. Cigarette, 100 S.Ct. 3225, 3234 (1980) ("The burden on the moving party may be discharged by 'showing' that it is not probable that the District Court -- that there is an absence of evidence to support the nonmoving party's case."); Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505, 2510 (1986).

"(2) Summary Judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 106 S.Ct. at 2510. The issue is not for the Court when it weighs the evidence for summary judgment is whether the evidence presents a sufficient question for the jury to decide.



jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson 106 S.Ct. at 2512. In the instant case, the Court finds that there are genuine issues of material fact which go to the heart of the alleged cause of action; and accordingly, summary judgment is not proper in this case. Plaintiff's motion for summary judgment is due to be, and hereby is, DENIED.

Defendant Morris' motion for summary judgment.

Defendant Morris claims that she is entitled to summary judgment on the RICO cause of action as a matter of law, even if all of the disputed fact are resolved in favor of the plaintiff. Plaintiff denies that this is so. (86-0607 Doc. #63, 86-0607 Doc. #73). Defendant argues that there are three independent reasons why plaintiff cannot recover, each of

jury or whether it is an one-sided case  
one party must prevail as a matter of  
law. Anderson 100-5-01, at 2515. In the  
instant case, the Court finds that there  
are genuine issues of material fact which  
go to the heart of the alleged cause of  
action, and accordingly, summary judgment  
is not proper in this case. Plaintiff's  
motion for summary judgment is due to be  
and hereby is DENIED.

Defendant's Motion for Summary

Judgment.

Defendant's Motion for summary judgment is  
based on summary judgment on the basis  
of motion as a matter of law, and  
it is of the undisputed fact and resolved  
in favor of the plaintiff. Plaintiff  
has shown that this is not a one-sided case  
and that there are genuine issues of material  
fact which go to the heart of the alleged cause of  
action, and accordingly, summary judgment is not  
proper in this case.

which is sufficient to grant defendant's motion for summary judgment. First, defendant claims that plaintiff lacks standing to bring a RICO claim because the injury plaintiff claims to have sustained does not give rise to a RICO cause of action. Second, defendant argues that plaintiff's allegations regarding the RICO predicate acts are insufficient as a matter of law. Third, defendant argues that plaintiff has failed to show the requisite continuity of the alleged racketeering activity.

#### Standing.

Private civil RICO actions are provided for under 18 U.S.C. 1964(c) which states that:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

which is sufficient to show defendant's  
motion for summary judgment. First,  
defendant claims that plaintiff lacks  
standing to bring a RICO claim because the  
injury plaintiff claims to have sustained  
does not give rise to a RICO cause of  
action. Second, defendant argues that  
plaintiff's allegations regarding the RICO  
predicate acts are insufficient and  
cannot be proven. Third, defendant argues  
that plaintiff has failed to show the  
required causality of the alleged  
predicate acts.

Standing

Plaintiff claims RICO claims are  
provided for under 18 U.S.C. sections 1961-1967.  
Section 1961

Any person injured in his business or  
property by reason of a violation of  
section 1962 of this chapter may bring  
therein in any appropriate United  
States district court and shall  
recover and obtain the damages he  
sustains and the costs of the suit,  
including a reasonable attorney's fee.

Id. In order to state a RICO cause of action, plaintiff must plead and prove (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, S.P.R.I. v. Imrex Co., Inc., 473 U.S. 479, 105 S.Ct. 3285, 3275 87 L.Ed.2d 346 (1985). Furthermore, plaintiff does not have standing to bring the action unless he has been injured in his business or property. Id.

Plaintiff claims that he was injured in his business or property in that he incurred expenses totalling \$,500.00 in defending the legal proceedings instituted by defendant Morris, and that he suffered mental distress. It is settled law that "some aspects of damages normally recoverable for personal injuries, such as mental anguish, fall outside the rubric of "business or property." Grogan v. Platt,



835 F.2d 844, 846 (11th Cir. 1988). Whether attorney's fees incurred by the plaintiff defending the Baldwin County actions constitute injury to property within the meaning of the statute is a closer question. The Court has been unable to locate any binding case directly on point. However, defendant Morris cited a District Court case from the Southern District of Florida which is directly on point, and which this Court finds compelling. Local 355 v. Pier 66 Corp., 599 F.Supp. 761 (S.D.Fla. 1984). In Local 355 a labor union brought suit against an employer for damages it sustained when the employer induced its employees to file a decertification petition with the National Labor Relations Board. The Florida Court held that attorneys fees and costs incurred by the union in defending against the decertification effort were





"incidental damages which [did] not arise to the type of proprietary damage for which RICO gives compensation." Id. at 765. Plaintiff argues that Local 355 is "easily distinguishable" because the damages there were incidental and were not caused by the racketeering activity. The Court disagrees, and adopts the reasoning followed by the Florida court. Plaintiff does not have standing to bring this RICO action and accordingly, defendant Morris' motion for summary judgment is due to be, and hereby is, GRANTED.

Miscellaneous.

Plaintiff's motions to preserve his objections to the defendants' exhibit and witness list, 86-0607 (Doc. #62) and 86-0608 (Doc. #83) are CARRIED TO TRIAL.

Defendant Enfinger's motions to amend his answers, 86-0607 (Doc. #76) and 86-0608 (Doc. #77), are GRANTED.

"included" damages which (did) not arise  
to the type of proprietary damages for  
which RICO gives compensation." Id. at  
352. Plaintiff argues that local 352 is  
"essentially distinguishable" because the  
damages there were incidental and were not  
caused by the racketeering activity. The  
Court disagrees, and rejects the reasoning  
followed by the Florida court. Plaintiff  
does not have standing to bring this RICO  
action and accordingly, Defendant's Motion  
for summary judgment is due to be  
and hereby is, GRANTED.

#### Miscellaneous.

Plaintiff's Motion to preserve his  
objections to the defendant's exhibit and  
witness list, 00-0007 (local 352) and 00-  
0008 (local 483) are denied in their  
entirety. Plaintiff's Motion to preserve his  
objections to the defendant's exhibit and  
witness list, 00-0007 (local 352) and 00-  
0008 (local 483) are denied.

Defendant Morris' motion for oral argument, 86-0607 (Doc. #80), is DENIED.

DONE this 24th day of March, 1989.

Alex T. Howard

-----  
Chief United States  
District Judge

Defendant's Motion for oral  
argument, 85-0607 (Post, 12/20/85), is DENIED.

DONE this 24th day of March, 1986.

Alvin T. Howard  
Chief United States  
District Judge

The following is a copy of the  
transcript of the hearing held on  
March 11, 1986, at the United States  
District Court for the District of  
Columbia, before the Honorable  
Alvin T. Howard, Chief United States  
District Judge, in the case of  
United States v. [Name], No. 85-0607.  
The transcript was prepared by  
[Name], Court Reporter, and is  
submitted herewith for the Court's  
review and approval.

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

CHARLES STEWART, )  
)  
Plaintiff, )  
)  
vs. ) CIVIL ACTION NO.  
) 86-0607-AH-C  
) 86-0608-AH-C  
DOROTHY MORRIS, FLOYD )  
ENFINGER, JR., )  
)  
Defendants. )

ORDER

This cause is before the Court on Plaintiff's motion to certify. Plaintiff originally filed two civil actions arising out of the same set of facts and circumstances, Civil Action Number 86-0607-AH and Civil Action 86-0608-AH. Civil Action NO. 86-0607-AH purported to state a RICO cause of action. During the course of the proceedings the Court consolidated the two actions for all purposes, and subsequently granted summary judgment in favor of the defendants on the

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

CHARLES STEWART

Plaintiff,

CIVIL ACTION NO.

88-0001-AH-C

88-0002-AH-C

ROBERTA MARIE, TRUSTEY

Defendant.

Defendants.

ORDER

This court is before the Court on Plaintiff's motion to dismiss. Plaintiff has previously filed two civil actions relating to the same set of facts and circumstances, Civil Action Number 88-0001-AH and Civil Action 88-0002-AH. Civil Action No. 88-0001-AH purported to state a claim of fraud. During the course of the proceedings, the Court concluded that a two-count fraud claim was not supported by the evidence, and subsequently granted summary judgment in favor of the defendant on the

RICO claims, formerly C.A. No. 86-0607-AH. Plaintiff now wishes to appeal that decision, and moves this Court for an order certifying that the grant of summary judgment on his RICO cause of action is a final judgment. Pursuant to Fed. R. Civ. P. 54(b), the Court finds that there is no just reason for delay of the entry of final judgment on the RICO causes of action, originally filed as 86-0607-AH. Accordingly, plaintiff's motion is GRANTED. The judgments dated March 24, 1989 and May 26, 1989 are final judgments. The Clerk is directed to proceed accordingly.

DONE this 12th day of July, 1989.

Alex T. Howard

-----  
Chief United States  
District Judge



RICO claims, formerly C.A. No. 82-0007-AM.  
Plaintiff now wishes to appeal that  
decision, and moves this Court for an  
order certifying that the case is a summary  
judgment on his RICO cause of action is a  
final judgment. Pursuant to Fed. R. Civ.  
P. 54(d), the Court finds that there is no  
just reason for delay of the entry of  
final judgment, and the RICO cause of  
action, originally filed as 82-0007-AM,  
accordingly, plaintiff's motion is  
granted. The judgment is entered as  
final judgment on May 20, 1983 and the  
case is set aside to be retried as of  
course.

Very truly yours,  
Chief United States  
District Judge



UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 89-7612

Non-Argument Calendar

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D.C. Docket Nos. 86-0607-AH, 86-0608-AH

CHARLES STEWART,

Plaintiff-Appellant

versus

DOROTHY MORRIS, FLOYD  
ENFINGER, JR.,

Defendants-Appellees.

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Appeal from the United States District  
Court for the  
Southern District of Alabama

---

Before JOHNSON and CLARK, Circuit Judges  
and HENDERSON, Senior Circuit Judge.



## J U D G M E N T

This cause came to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 34-3;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

IT IS FURTHER ORDERED THAT plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: May 29, 1990  
For the Court:  
Miguel J. Cortez, Clerk.  
By: David Maland  
Deputy Clerk

ISSUED AS MANDATE: JUN 21 1990

EXHIBIT

This case is to be heard on the  
evidence of the record from the United  
States District Court for the Eastern  
District of Alabama, and was heard under  
admission in the Court upon the record  
and books on file, pursuant to Article  
XIII of the Constitution.

The Constitution provides, in its  
seventh section, that no bill shall  
be passed by the House of Representatives  
which shall contain any appropriation of  
money from the Treasury of the United States  
for any civil or military service.

It is the duty of the House of  
Representatives to see that no bill  
shall be passed which shall contain  
any appropriation of money from the  
Treasury of the United States for any  
civil or military service.

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## APPENDIX E

Title 18 U.S.C. Section 1961 reads as follows:

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit



transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband





cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 [29 USCS 186] (dealing with restrictions on payments and loans to labor organizations) or section 501(c) [29 USCS 501(c)] (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;



(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [enacted Oct. 15, 1970] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political

(1) "person" included any individual or entity capable of holding a legal or beneficial interest in property;

(2) "association" included any individual, partnership, corporation, association, or other legal entity, and any group or individual associated in such manner with a legal entity as to be treated as a legal entity;

(3) "partner" or "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(4) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(5) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(6) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(7) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(8) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(9) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

(10) "partnering activity" required at least two persons or entities, one of which owned or controlled at least one of the shares, interests, or other rights in the partnership, and the other of which owned or controlled at least one of the shares, interests, or other rights in the partnership;

subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter [18 USCS 1961 et seq.];

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of



ascertaining whether any person has been involved in any violation of this chapter [18 USCS 1961 et seq.] or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter [18 USCS 1961 et seq.];

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter [18 USCS 1961 et seq.]. Any department or







agency so designated may use in investigations authorized by this chapter [18 USCS 1961 et seq.] either the investigative provisions of this chapter [18 USCS 1961 et seq.] or the investigative power of such department or agency otherwise conferred by law.

(Added Oct. 15, 1970, P. L. 91-452, Title IX, 901(a) 84 Stat. 941; Nov. 2, 1978, P. L. 95-575 3(c), 92 Stat. 2465.)

Title 18 U.S.C. Section 1962 reads as follows:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, Title 18, United States Code [18 USC 2],



to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engages in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class,



and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person

and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(c) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any substantial interest in, or any substantial influence over, the activities of which effect, substantial or foreign commerce.

(d) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or attempt to conduct any business or financial transaction or other activity in which the person is engaged in or attempts to engage in if the person knows or intends that the transaction or activity will result in the commission of a violation of this section.

(e) It shall be unlawful for any person to attempt to commit or to conspire to commit a violation of this section.

to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

(Added Oct. 15, 1970, P. L. 91-452, Title IX, 901(a), 84 Stat. 941.)

Title 18 U.S.C. Section 1964 reads as follows:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter [18 USCS 1962] by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in,

to contribute to violate any of the provisions of sections (a), (b), or (c)

of this section.

(Added Dec. 15, 1970, P. L. 91-552, Title

IX, 907(a), 91 Stat. 241.)

Title 18, U.S.C. Section 199, reads as

follows: (a) The district courts of the United

States shall have jurisdiction to prevent

and restrain violations of section 1952 of

this chapter and to issue orders of arrest

and detention in cases of intimidation, and may

impose and enforce any order or decree

which may be necessary to carry out the

purposes of this chapter.

Section 1952 of this chapter reads as follows:

(a) Whoever conspires to obstruct justice

or to obstruct the administration of justice

shall be fined not more than \$10,000 or

imprisoned not more than five years, or

both, or shall be subject to the penalties



the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter [18 USC 1962] may sue therefor in any appropriate



United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter [18 USCS 1961 et seq.] shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(Added Oct. 15, 1970, P. L. 91-452, title IX, 901(a), 84 Stat. 943.)